UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANSON KLINGER,

Defendant.
_____/

CASE NO.: 00-6309- CR-SEITZ (s)(s)(s)

DEFENDANT ANSON KLINGER'S MOTION AND MEMORANDUM FOR DOWNWARD DEPARTURE

The Defendant, Anson Klinger, by and through the undersigned counsel, moves this Honorable Court to depart downward from the total offense level under the guidelines pursuant to U.S.S.G. §5H1.4, since the facts in this case warrant such a departure. The Pre-Sentence Investigation (PSI) report places Mr. Klinger at an offence level of ten. Pursuant to the plea agreement, the government is recommending the low end of the guidelines which would mean a sentence of home confinement as a special condition of probation. Mr. Klinger respectfully requests that this Court grant a downward departure of two levels to a level eight to allow this Court to sentence Mr. Klinger to probation without the additional requirement of home confinement.

This request is made because of Mr. Klinger's present physical condition. As indicated in the addendum to the PSI and now incorporated into the PSI in paragraph 105, Mr. Klinger suffers from residual motor weakness, sensory loss, gait disorder and erectile dysfunction which condition appears to be permanent with no specific treatment available. This condition

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was caused due to a significant residuel cauda equina syndrome secondary to improper placement of an epidural catheter. A copy of Dr. Kenneth C. Fisher's report is attached.

Due to this permanent physical condition Mr. Klinger uses a walker and/or cane to ambulate. Moreover, certain specific modifications were done to his home to assist him in his living. Pictures of these modifications are attached to the PSI. The modifications include a special toilet, a chair in the shower as well as double banisters on all stairways. Additionally, Mr. Klinger goes to rehabilitation two times a week a Pinecrest Rehabilitation Center at Pinecrest Hospital located in Delray Beach. Beyond the supervised rehabilitation, Mr. Klinger has a series of home exercises that he must do every day

Pursuant to U.S.S.G. §5H1.4, "an extraordinary physical impairment may be a reason to impose a sentence below the applicable guideline range."

We submit that granting a downward departure of two levels and relieving Mr. Klinger of the component of home confinement would make it easier for him to visit his doctor and attend the physical therapy sessions that he needs in order to try to improve his physical condition. A period of home confinement could conflict with his ability to receive the necessary physical rehabilitation and medical care that he needs in order to try to rehabilitate his present condition.

WHEREFORE, the Defendant hereby requests that this Honorable Court grant this request for an offence level reduction of two levels.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was faxed this April 9, 2002 to: Brian McCormick, Assistant U.S. Attorney, (954) 356-7230 and Bonita Abrams, U.S. Probation Officer (954) 769-5566.

JOSEPH S. ROSENBAUM, ESQ.

KENNETH C. FISCHER, M.D., P.A.
DIPLOMATE AMERICAN BOARD OF NEUROLOGY
DIPLOMATE AMERICAN BOARD OF QUALITY ASSURANCE UTILIZATION REVIEW
DIPLOMATE AMERICAN ACADEMY OF PAIN MANAGEMENT

5-29-01

Meyer Cohen, M.D.
1905 Clint Moore Road
Suite 301
Boca Raton, FL 33496

NEUROLOGICAL CONSULTATION - RE: Anson Klinger

Present illness: Today I have seen for neurological evaluation Mr. Anson Klinger, a 61 year old right-handed businessmen with a history of gout and hyperlipidemia.

Three years ago, while the Las Vegas the patient had acute diverticulitis which required emergency surgery resulting in a colectomy, reversal of the colectomy and development of a large ventral hernia.

He was admitted by Dr. Andrew Ross to Boca Raton Community Hospital 11-14-00 to repair the large ventral hernia. He was to receive epidural anesthesia and an epidural catheter was installed by Dr. Levin, anesthesiology, on 11-14-00.

Despite the epidural, the patient had significant pain postoperatively, and required frequent IM Demerol injections. After the catheter was removed on 11-17-00, the nursing personnel attempted to ambulate Mr. Klinger, but he had significant weakness and collapsed.

The next day, he was found to have bilateral lower extremity weakness and numbness and neurological consultation was requested. The patient was seen by Dr. Boltz who found bilateral weakness in the lower extremities worse on the left with sensory loss and diagnosed a cauda equina syndrome. He ordered a lumbar and thoracic MRI scan.

The scan was performed under sedation on 11-19-00 and revealed severe diffuse thickening of the cauda equine and conus suggesting an inflammatory reaction. The patient already had been on IV Solumedrol for his gout and the dosage was increased by Dr. Boltz to 40 mg Q. 12 hours. On 11-21-00 Mr. Klinger was transferred to Pinecrest Rehabilitation with Dr. Picard. After several weeks at the facility, he was discharged and has received outpatient PT thereafter.

Despite the therapy, the patient has persistent weakness, numbness, stiffness, and pain in his lower extremities with gait disturbance and erectile dysfunction with preservation of bowel and bladder functions. He feels he has plateaued over the past several weeks.

Recently, the patient has developed a new problem, horizontal diplopia which has been constant without headache, ptosis, speech difficulty, confusion, and other neurological symptoms. For both reasons, he seeks neurological opinion.

Past history: hyperlipidemia, gout

Review of systems:
Neuro: as above
Psych: N/A
E.N.T.: diplopia
Pulm: N/A
Cardio: hyperlipidemia

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G.I.: diverticulitis, hernia
G.U.: erectile dysfunction
Gyn: N/A
Endo: N/A
Ortho: N/A
Derm: N/A

Social history: divorced, one daughter, no substance abuse

Allergies: none

Operations: colectomy, hernia repair noted above

Family history: His mother has Alzheimer's disease.

NEUROLOGICAL EXAMINATION

MENTAL STATUS:
Normal with full orientation, memory, and cognitive function.

SPEECH:
Speech was clear with no dysarthria and no dysphasia.

HEAD & NECK:
Good range of motion without bruits. There was no nuchal rigidity.

CRANIAL NERVE TESTING:
II - Intact with no papilledema. Funduscopic examination is unremarkable. Visual acuity was normal. There was no visual field defect.

III, IV, VI - Pupils are symmetrical and equally reactive to light and near vision. Possible partial right adduction weakness.

V - Facial sensation is normal and symmetrical. Corneal responses are normal.

VII - No facial asymmetry is present.

VIII - Hearing is grossly intact. Weber and Rinne testing is normal.

IX & X - Palate is midline; gag response is normal. Swallowing was normal.

XI - Shoulder shrug is symmetrical.

XII - Tongue is midline without atrophy.

MOTOR EXAMINATION:
weakness bilaterally in the lower extremities, worse on the left, particularly at the iliopsoas grade 4/5, grade 4+ to 5-/5 distally

SENSORY EXAMINATION:
bilateral L4-5 sensation loss, worse on the right

DEEP TENDON REFLEXES:
absent in both lower extremities

COORDINATIVE EXAMINATION:
Reduced in both legs secondary to the weakness.

GAIT AND STATION:
Ataxic with a wide based uncertain gait with inability to walk on heels or toes.

BACK EXAMINATION:
Negative straight leg raising. Normal mobility. There is no spasm or tenderness.

IMPRESSION:
Mr. Klinger has two distinct problems, a significant residual cauda equina syndrome secondary to improper placement of an epidural catheter in November 2000 with residual motor weakness, sensory loss, gait disorder and erectile dysfunction. Unfortunately, much of this appears permanent with no specific treatment available.

He also has a suggestion of a new onset right third nerve paresis.

PLAN:
I recommend we have a brain MRI scan and MRA who sets possible structural causes of a third nerve paresis. He should have a three-hour GTT and other metabolic studies. Mr. Klinger informs me he recentiy had substantial laboratory testing actual office, and I would appreciate your sending those results to review.

Thank you very much.

Kenneth C. Fischer, M.D.